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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,391	12/07/2001	Nabil Enrique Salman	8384R	6122

27752 7590 11/26/2003

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EXAMINER

TRUONG, THANH K

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 11/26/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,391

Applicant(s)

SALMAN ET AL.

Examiner

Thanh K Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) 10,12,17 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,11,13-16,18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 10, received on October 2, 2003.
2. Applicant's cancellation of claims 3, 4 and 9 in Paper No. 10 is acknowledged.

Election/Restrictions

3. This application contains claims 10, 12, 17 and 19 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 2, 5-8, 11, 13-16 & 18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 6-10 of copending Application No. 09/745,702. Although the conflicting claims are not identical, they are not patentably distinct from each other. A side-by-side comparison of the two claimed inventions reveals a substantially same scope of invention; moreover, the present claimed invention is anticipated by the copending Application No. 09/745,702.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 5-8, 11, 13-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecomte (6,065,272) in view of Hamilton et al. (5,662,758).

Lecomte discloses (figure 1) an article packaging device comprising: an inlet end "I" (reference signs "B", "C", "I", "O", "X", "Y" are marked by the examiner on figure 1); an outlet end "O"; a body "X" formed by an inner core having an inlet opening and an outlet

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opening, and a passageway therebetween; a casing "Y" comprising a casing wall around the body, the casing joined to the body with a storage space "C" between them; A tubular sheet 3 within the storage space, the tubular sheet dispensable through a dispensing opening between the body and the casing and into the inlet opening of the inner core; and a means 5 for gathering the tubular sheet and separating the packaged article from a trailing portion of the tubular sheet and the device.

Lecomte further discloses: the separating means comprises a cutting means for cutting through the trailing portion of the tubular sheet to form a packaged article (column 2, lines 9-13 and column 5, lines 20-24); the inlet opening is circular; the passageway is curved (figure 1 shows the passageway is curved at the top where sheet 3 is guided into the inlet opening); and the tubular sheet is in a layered stack.

Lecomte discloses the claimed invention, except that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Lecomte apparatus by applying the

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flexible film with adhesive as taught by Hamilton providing a flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

The modified Lecomte apparatus further discloses an indexing means where the distance between the pickup position and the deposit position is maintained substantially constant (column 4, lines 18-33).

Regarding to claim 15, Lecomte discloses the claimed invention, but did not expressly disclose the device having a compact dimension as cited in claim 15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device having a compact dimension (as cited in claim 15) providing consumers a portable, light weight device, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 1, 2, 5-8, 11, 13-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards et al. (4,869,049) in view of Hamilton et al. (5,662,758).

Richards discloses an apparatus comprising: a body formed by an inner core having an inlet opening and an outlet opening and a passageway there between (figures 1, 4 & 5); a casing 1 comprising a surrounding casing wall, a storage space to retain a length of the flexible tubular sheet 2 within the storage space in a layered stack; the tubular sheet is gathered and closed at each end to form a closed packaged article

35 (figure 1); a means 61 for separating the closed packaged article; and the cutting blade 64.

Richards further discloses the article to be packaged is a waste-filled disposable absorbent article (column 2, lines 42-44); and an indexing means so the distance between the pickup position and the deposit position is maintained substantially constant (column 3, lines 43-45 and figure 1).

Richards discloses the claimed invention, but does not expressly disclose that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Richards' tubular sheet by applying the flexible film with adhesive as taught by Hamilton providing a flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

Response to Arguments

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10. Applicant's arguments filed October 2, 2003 have been fully considered but they are not persuasive.

11. In response to the Applicant's argument that there is no reason to combine Lecomte and Hamilton, the examiner disagrees.

Applicant claimed invention is an apparatus claim; the tubular sheet does not set forth any structure limitation to the apparatus claim. The flexible tubular sheet is a work piece that is being used with the apparatus, thus, it is not being considered as a structure limitation of the claim.

Lecomte's apparatus can be used with varieties of flexible tubular sheet materials including the material disclosed by Hamilton. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

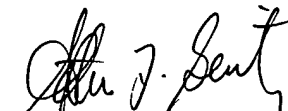
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Stephen F. Gerrity
Primary Examiner

tkk
November 21, 2003.